

COTTONWOOD HEIGHTS

RESOLUTION No. 2012-54

A RESOLUTION APPROVING A CONSULTING AGREEMENT WITH JESSICA WINITZKY FOR PREPARATION OF A COMPREHENSIVE EXAMINATION FOR A SERGEANT PROMOTIONAL

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 25 September 2012 to consider, among other things, approving a consulting agreement (the "*Agreement*") with Jessica Winitzky ("*Consultant*") whereunder Consultant would prepare a comprehensive examination for a sergeant promotional to be conducted by the City's police department; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

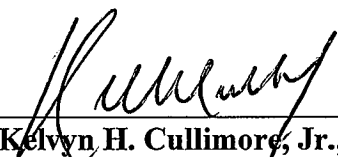
This Resolution, assigned no. 2012-54, shall take effect immediately upon passage.

PASSED AND APPROVED effective 25 September 2012.

COTTONWOOD HEIGHTS CITY COUNCIL




Linda W. Dunlavy, Recorder

By 
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 25th day of September 2012.

RECORDED this 26 day of September 2012.

585134.1

Consulting Agreement

THIS CONSULTING AGREEMENT (this "*Agreement*") is made effective __ September 2012 by **COTTONWOOD HEIGHTS**, a municipality of the state of Utah whose address is 1265 Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **JESSICA WINITZKY**, an individual whose address is 331 South 800 East, Salt Lake City, UT 84102 ("*Consultant*").

RECITALS:

A. City desires to engage Consultant, on an independent contractor basis, to research and prepare a comprehensive written examination (the "*Exam*") to be administered by City's police department ("*CHPD*") to peace officers to help gauge their suitability for promotion in rank within CHPD's command structure.

B. Consultant desires to be so engaged by City on the terms and conditions specified in this Agreement.

C. The parties have determined that it is mutually advantageous to enter into this Agreement.

D. This Agreement contains the parties' entire agreement concerning the Services (defined below) to be provided by Consultant to City, and supercedes any and all prior negotiations or agreements, oral or written, between the parties concerning the same.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Engagement.** City hereby engages Consultant, and Consultant hereby accepts such engagement, to perform all work (the "*Services*") necessary to research and prepare the Exam and to perform all of Consultant's other responsibilities under this Agreement. The Exam shall consist of 150 multiple choice and true-false questions, using as the sole bases for such questions CHPD's written policy manual (the "*Manual*") and the text book *Effective Police Supervision* by Harry W. More and Larry S. Miller (Sixth Edition; 2011) (the "*Textbook*") (the Manual and the Textbook are, collectively, the "*Reference Materials*"). The content and scope of the Exam shall be expressly subject to City's input and approval as described below.

2. **Materials, Supplies and Equipment.** Because the Manual is not publicly available, City promptly shall loan a copy of the Manual to Consultant for her use in performing the Services. Upon request, City also promptly may loan a copy of the Textbook to Consultant to facilitate her performance of the Services on the timetable specified below. Otherwise, Consultant shall provide at her cost all labor, supervision, materials, supplies and equipment needed to perform the Services. Consultant shall perform the Services at her own workplace on not on

City's business premises. Consultant shall hold a business license for such workplace from the local governmental entity with jurisdiction.

3. **Time for Performance.** The Services shall be undertaken in such sequence as Consultant determines to assure their expeditious completion. A "polished" draft of the Exam shall be submitted to CHPD's chief (the "*Chief*") for review on or before 5 October 2012. The Chief will provide any comments or questions concerning the draft Exam to Consultant within three days thereafter, whereupon Consultant shall make any appropriate revisions to the Exam and re-submit it for review and approval by the Chief, with the same cycle continuing until 15 October 2012, when Consultant shall deliver the final Exam to the Chief, together with a correction key (the "*Key*") for the Exam that includes a citation to the specific portion (e.g., paragraph and page) of the Reference Materials supporting each correct answer.

4. **Standards.** The Services shall be performed and provided by Consultant in a professional, ethical manner in compliance with all laws and applicable standards of performance. Subject to the foregoing and the other requirements of this Agreement, the exact nature of how the Services are to be performed and other matters incidental to providing the Services shall remain with Consultant.

5. **Fees for Services, Costs and Expenses.** City shall pay Consultant a sum not to exceed \$1,200 (the "*Fee*") for all Services, costs and expenses incurred hereunder.

6. **Method of Payment.** City shall pay the Fee to Consultant within thirty (30) days after satisfactory completion of Services and delivery of the final Exam and Key, and any other products of the Services, as reasonably determined by the Chief.

7. **Status.** In performing the Services, Consultant shall at all times be an independent contractor, and not an employee, of City. As an independent contractor, Consultant shall not be entitled to any benefits or perquisites offered by City to its employees, such as insurance coverage, paid vacation, retirement plan funding, or any other items. Instead, Consultant's sole compensation for performance of the Services shall be the compensation and costs reimbursement described in section 5 above.

8. **Termination.** City may terminate this Agreement, with or without cause, upon at least ten days' prior written notice to Consultant. If City so terminates, then City shall pay Consultant for all Services performed before such termination, as reasonably determined by City after reviewing the stage of completion of the products of the Services.

9. **Indemnity.** Consultant shall defend, indemnify, save and hold harmless City, including its elected and appointed officials, employees, agents and contractors, from and against any and all demands, liabilities, claims, damages, actions, or proceedings, in law or in equity, including reasonable attorneys' fees and costs of suits, relating to or arising from Consultant providing the Services to City.

10. **Confidentiality.** The Manual, all information that Consultant may receive from City or its employees or consultants in connection with the Services, and the products of the Services (including the Exam and the Key) shall be regarded by Consultant as strictly confidential, shall be held by Consultant in confidence and shall not be used by Consultant or

directly or indirectly disclosed by Consultant to any person whatsoever (other than the City's manager or Chief) without City's prior written consent, except as required by court order or by the Utah Government Records Access and Management Act (Utah Code Ann. 63G-2-101 *et seq.*).

11. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) **Time of Essence.** Time is the essence of this Agreement.

(i) **Interpretation.** This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) **Attorneys' Fees.** In the event any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) **Notice.** Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail,

postage prepaid and certified and addressed to the parties at their respective addresses set forth above or to such other address(es) as a party may specify to the other in writing at any time during the term of this Agreement.

(l) Assignment. Consultant may not assign its rights or delegate its duties hereunder to any third party without City's prior written consent, which shall not be withheld or delayed unreasonably.

(m) Integration. This Agreement contains the parties' entire agreement relating to Consultant's performance of the Services for City, and supersedes and consolidates all prior agreements and negotiations, oral and/or written, between the parties relating in any way to such matters.

DATED effective the date first above written.

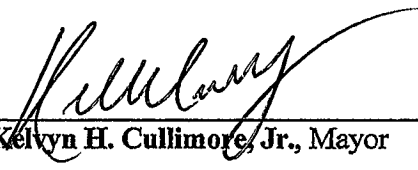
CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

Linda W. Dunlavy, Recorder

By: _____


Kelvin H. Cullimore, Jr., Mayor

CONSULTANT:



Jessica Winitzky

584155.1